

PLN

13890

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-197627

DATE: June 3, 1980

MATTER OF: Captain Donald Reid, USN, (Retired)

DIGEST: Considering his rank, years of service, and the amount of the erroneous overpayment, a service member, who received an unexplained payment of pay and allowances due to an administrative error should have known that the payment was erroneous, and that he would be required to refund the excess amount. As a result he may not be considered as being without fault in the matter so as to permit waiver of his indebtedness.

[Request

Captain Donald Reid, USN, Retired, requests reconsideration of our Claims Division's November 13, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$591.07. The debt arose from erroneous payments of the member's pay. Denial of the waiver is sustained.

The record shows that Captain Reid was originally overpaid due to a lack of recoupment of Medical Continuation Pay in January 1975. The disbursing officer began deduction of \$124 each month for repayment beginning August 1, 1975. Upon conversion to the Joint Uniform Pay System on January 1, 1976, a balance of \$715.07 remained to be repaid with the last deduction to be collected June 30, 1976. The debt was paid on schedule. Thereafter, through administrative error, the disbursing officer determined that the member's indebtedness had been repaid in full as of January 1, 1976. In August 1976, the disbursing officer reconstructed the member's pay and determined that he had been underpaid. As a result, the disbursing officer made a payment to Captain Reid on September 1, 1976, in the amount of \$1,019 of which \$591.07 was erroneous. The member was informed of the error in August 1977.

In his original request for waiver Captain Reid contended in effect that he did not know or suspect that he was being overpaid and that the overpayment was due to administrative error in adjusting his pay account. The waiver denial was based upon the member's being at fault in failing to question large unexplained increases in his pay in September 1976 and

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not retaining the excess amounts for possible refund to the Government until he received reasonable answers to his questions. In his appeal, Captain Reid also contends that he did attempt to question his pay and he was given no satisfactory answer for the payments. Instead, he states that he was told that they were associated with continuation pay and that they were correct.

Section 2774 of title 10, United States Code (1976), provides our authority to waive certain debts when collection would be against equity and good conscience and not in the best interests of the United States. However, subsection 2774(b) precludes waiver if, in the opinion of the Comptroller General—

"* * * there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member * * *"

We interpret the word "fault", as used in 10 U.S.C. 2774, as including something more than a proven overt act or omission by the member. Thus, we consider fault to exist if in the light of all of the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. See decisions B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, Captain Reid received a payment of \$914 on August 30, 1976, the identical amount he had been paid for the three preceding pay periods. Then one day later, September 1, 1976, he received an unexplained payment of \$1,019. He was further paid payments of \$1,041 each on September 15, 1976, and September 30, 1976. Considering his rank, his years of service, and the unusually large amount of the unexplained payment, the member should have known that he was being overpaid and when he failed to receive a satisfactory answer to his questions, he should have requested a complete explanation of his pay. By failing to do so, he was at least partially at fault. Since he had no basis for receiving the payment of September 1, 1976, he should have, at a minimum, set aside this excessive amount until a definite determination and statement had been made to him fully explaining his entitlement. Further, he should have known that

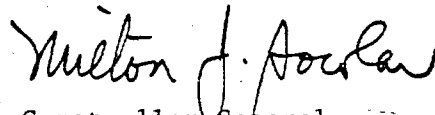
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if he continued to be overpaid, he would eventually be required to repay the erroneous amounts.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound by equity and good conscience to make restitution. See decisions B-188595, June 3, 1977; B-124770, September 16, 1955; and cases cited therein.

Since Captain Reid had a duty and a legal obligation to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected, we are unable to conclude that he is free from fault. Therefore, collection action is not against equity and good conscience nor is it contrary to the best interests of the United States.

Accordingly, the action of our Claims Division denying waiver is sustained.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is written in a cursive, flowing style.

For the Comptroller General
of the United States